In the High Court of Punjab and Haryana, Chandigarh.

C.R. No. 4061 of 2001 (O&M)

Date of Decision: 02.07.2010

Ram Kumar

....Petitioner

Versus

Surat Singh

....Respondent.

Coram:- Hon'ble Mr. Justice Alok Singh

1. Whether reporters of local news papers may be allowed to see judgement ?
2. To be referred to reporters or not ?
3. Whether the judgement should be reported in the Digest ?

Present: Mr. Kamal Sharma, Advocate
for the petitioner.

...

Alok Singh, J. (Oral).

Petitioner has invoked jurisdiction of this Court under Article 227 of the Constitution of India challenging order dated 4.6.2010 passed by the Civil Judge, Panipat and dated 15.6.2000 passed by the Additional District Judge, Panipat, thereby both the Courts below have dismissed application of the petitioner-plaintiff seeking ad interim injunction during the pendency of the case.

Brief facts of the present case are that plaintiff had instituted the suit seeking permanent injunction restraining the defendant from raising construction on the property in dispute as the same is part of the common Sehan and courtyard and defendant cannot be permitted to raise

construction thereon.

Suit was contested by the defendant and the defendant has alleged that the property was partitioned as per the settlement between the parties long before and plaintiffs is in possession and use of the property which has fallen in his share and the defendant is in occupation and use of the property which has fallen in his share.

The trial Court in para 7 has observed as under: -

"7. It is admitted that the plaintiffs and defendant are co-sharers in the suit property. It is also an admitted fact that plaintiff is having 1/4th share and defendant is having 3/4th share in the suit property. It is also an admitted fact that property has been partitioned between plaintiff and defendant. It is the case of the plaintiff himself that specific share was given to them and they are using their share for their residential purposes, exclusively and separately. The plaintiff is claiming himself to be owner in possession of the part marked by letters ABFE. It is admitted fact that the defendant is having EFCD part in his share. It is settled law that co-sharers, who are in exclusive possession of their separate shares after the property stands partitioned are entitled to raise construction. The defendant who is owner in exclusive possession of a plot cannot be prevented from raising any construction over his share of the land in exclusive possession. Admittedly, as per averments contained in the plaint, property stands partitioned. Hence, no injunction can be granted in favour of the plaintiff."

In appeal, the First Appellate Court in paragraph 4 has

observed as under: -

> "Admittedly, the house/property in dispute was previously owned by Kedar Nath father of the plaintiff and Chhotu Ram father of the defendant. After the death of Kedar Nath, Ram Kumar plaintiff came into ownership and possession of the share owned by Kedar Nath and after the death of Chhotu Ram, Surat Singh defendant came into the ownership and possession. Later on the share of co-sharers of Moji Ram and Ram Diay was purchased by the defendant. It is the averments of the plaintiff that except the open courtyard and Sehan, the remaining portion of the house was partitioned between the parties, wherein it is the averment of the plaintiff is owner in possession of ¼ share. The defendant is raising construction on his portion after demolishing the same. There is no documentary evidence with the plaintiff that partition had been affected between the parties except open courtyard and Sehan. The learned counsel for the defendant has placed on record few photographs of the site in dispute in which the house seems to have been demolished and it is the averments of the counsel for the defendant that he would raise construction. The plaintiff has sought to three reliefs by virtue of suit, first is restraining the defendant from raising construction over the suit property marked by letters CDEF and from converting the suit property into one piece of plot. The learned counsel for the defendant has placed reliance on 2007(4) 417 titled as Surjeet @ Surjit Singh Kataria and others Vs. Raj Hans and others in which it

has been observed by Hon'ble High Court Punjab and Haryana that co-sharers who are in exclusive possession of the land cannot be prevented from raising any construction over the same by issuing injunction."

Both the Courts below have recorded prima-facie finding that since the property had already been partitioned amicably between the parties and defendant is raising construction over the portion falling in his share, hence no injunction can be granted in favour of the plaintiff. No illegality or perversity in the orders passed by the Courts below is pointed out by the learned counsel for the petitioner except arguing that in case defendant is permitted to raise construction, plaintiff would be deprived of light and air.

Suit is yet to be decided finally and the findings given by the Courts below are prima-facie in nature and shall not come into the way of the Courts below when the suit is decided finally. Moreover, plaintiff has not pleaded easementry rights. Any argument beyond the pleadings cannot be considered by the Court. No interference is called for.

Dismissed.

(Alok Singh)
Judge

02.07.2010
sk.